

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Brenda
Gulbranson of the Revocation of Her
Family Day Care License

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Tuesday, May 7, 1996, at 9:30 a.m. in the Dakota County Judicial Center in Hastings, Minnesota. Margaret M. Horsch, Assistant County Attorney, Dakota County Judicial Center, 1560 West Highway 55, Hastings, Minnesota 55033-2392, appeared on behalf of the Dakota County Social Services Department (the "County" or "Local Agency") and the Minnesota Department of Human Services (the "Department"). There was no appearance by the Licensee, Brenda Gulbranson, 12816 Essex Way, Apple Valley, Minnesota 55124, or by her attorney in this matter, David E. Albright, Attorney at Law, 7900 First Avenue South, Bloomington, Minnesota 55420.

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Maria R. Gomez, Commissioner, Minnesota Department of Human Services, 2nd Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Licensee's license to provide family day care should be revoked based upon the alleged disqualification of her minor son.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee, Brenda Gulbranson, has been a licensed group family child care provider in Dakota County since October 1, 1994.

2. A relicensing study was initiated by the County with respect to the Licensee in May, 1995. The background study conducted as part of the relicensing study revealed that Brent Gulbranson, the Licensee's minor son, had been arrested or investigated for and/or convicted of several criminal violations. The adjudicated offenses were based upon Brent's admissions that he committed an assault in the fifth degree of a thirteen-year-old in October, 1994, and that he made a number of obscene or harassing telephone calls in April, 1995, which included threats of bodily harm. See Exhibit 6.

3. In letters dated October 16 and 17, 1995, Brent Gulbranson was notified that the County had determined that he was disqualified due to an adjudicated assault in the fifth degree committed on October 11, 1994, an adjudication for obscene or harassing telephone calls committed on or about April 4, 1995, and a preponderance of evidence that he made terroristic threats on November 18, 1994; and committed fifth degree assaults on March 31, 1995, and August 15, 1995. Exhibits 1-2. Brent was notified of his right to request reconsideration of the disqualification finding. Id.

4. The Licensee was also notified that information had been found during the background study disqualifying Brent Gilbranson from direct contact with persons served by her program and informing her of Brent's right to submit a written request to the Commissioner for reconsideration of the disqualification. Exhibits 3-4.

5. By letter dated October 24, 1995, Brent Gulbranson requested that the Commissioner of the Department of Human Services reconsider the disqualification finding. Exhibit 5.

6. By letter dated November 28, 1995, Joan Granger-Kopesky, child care licensing worker for the County, recommended that the disqualifications not be set aside and that no variance be granted. Exhibit 6. Ms. Granger-Kopesky discussed the results of Brent's background study and the various police reports issued involving Brent and concluded that the incidents reported in the background study "represent a pattern of violence, intimidation, lack of respect for authority and unwillingness to change" and that Brent's behavior "poses an unacceptable risk to child care children's health, safety and rights." Id. In addition, Ms. Granger-Kopesky noted that Brent's services from United Behavioral Systems had been terminated based on poor attendance and an unwillingness to work and that Brent attended only three counseling sessions with the University of Minnesota Hospital and Clinic. She emphasized that Brent had "proudly stated [during his counseling session with a therapist at UMHC] that he was a member of a gang and described how he 'runs the town of Apple Valley' and how people were afraid of him because of his gang involvement" and pointed out that the therapist refused to provide the Licensee with a letter saying that Brent was not a risk to children based upon his high risk behaviors. Id.

7. In a letter dated December 28, 1995, addressed to Brent Gulbranson in care of the Licensee, the Commissioner of Human Services denied Brent's request for reconsideration based upon a determination that he had not demonstrated that the information relied upon to make the decision was incorrect or that he did not pose a risk of harm to any person served by family day care or foster care. Thus, the disqualification was not set aside, nor was a variance issued. Exhibit 7. The December 28, 1995, letter also contained a notification that the decision to deny the disqualification

request was a final agency action and was subject to review only through a Petition for Writ of Certiorari filed with the Minnesota Court of Appeals. Id.

8. The County recommended to the Commissioner in a letter dated December 29, 1995, that the group family child care license of the Licensee be revoked based upon the Commissioner's decision not to set aside the disqualification. Exhibit 8.

9. By letter dated January 16, 1996, the Commissioner notified the Licensee that, based upon the County's recommendation, the Commissioner was revoking her license to provide family day care because the background study conducted as part of the relicensing study for her family day care home revealed that a member of her household had been convicted of crimes which were a disqualification to licensure. Exhibit 9. The January 16, 1996, letter further notified the Licensee of her right to appeal the decision and proceed to a contested case hearing. Id.

10. By letter dated January 29, 1996, the Licensee appealed the Commissioner's revocation decision.

11. The Notice of and Order for Hearing in this matter was served on Brenda Gulbranson by first-class mail on February 20, 1996.

12. The Notice of and Order for Hearing contained the following language:

Failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing and Exhibit A being taken as true. This means that the action being appealed will be upheld.

13. The Notice of and Order for Hearing indicated that the hearing would be held on Wednesday, March 27, 1996. That date was later rescheduled at the joint request of the parties, first to April 18, 1996, and later to May 7, 1996. On April 18, 1996, counsel for the County sent counsel for the Licensee a copy of a letter confirming the rescheduling of the hearing to May 7, 1996, at 9:30 a.m. in the Dakota County Attorney's Office, Civil Division Conference Room, Dakota County Judicial Center, 1560 West Highway 55, Hastings, Minnesota.

14. Neither the Licensee nor counsel for the Licensee may any prehearing request for a continuance or any other relief. The Licensee did not personally appear at the hearing scheduled for May 7, 1996, or have an appearance made on her behalf. The Administrative Law Judge left a message on the answering machine of counsel for the Licensee's on May 7, 1996, regarding the Licensee's failure to appear at the hearing. As of the date of this Report, neither the Licensee nor counsel for the Licensee has contacted the Administrative Law Judge concerning their failure to appear at the hearing.

15. Because the Licensee failed to appear at the hearing in this matter, she is in default.

16. Pursuant to Minn. Rules pt. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.05, and 245A.08 (1994).

2. The Notice and Order for Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Licensee, having made no appearance at the hearing and not requesting any continuance or other relief, is in default. Pursuant to Minn. Rules pt. 1400.6000 (1995), the allegations taken in the Notice of and Order for Hearing are hereby taken as true.

4. The minor son of the Licensee has a disqualification pursuant to Minn. Rules pt. 9543.3070, subp. 1(A)(14)(50), and (52), and subp. 1(B) (1995) due to his convictions of the crime of assault in the fifth degree and the crime of obscene or harassing telephone calls and a preponderance of the evidence indicating that he committed acts that meet the definitions of the crimes of terroristic threats and assault in the fifth degree.

5. Pursuant to Minn. Rules pt. 9502.0335, subp. 6 (1995), the Licensee's license must be revoked due to the disqualification of a person living in the day care residence.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Human Services revoke the family day care license of Brenda Gulbranson.

Dated this 20th of May, 1996.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape Recorded (one tape).

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

May 20, 1996

Maria R. Gomez, Commissioner
Department of Human Services
2nd Floor Human Services Building
444 Lafayette Road
St. Paul, MN 55155

RE: In the Matter of the Appeal by Brenda Gulbranson of the Revocation of
Her Family Day Care License; OAH Docket No. 11-1800-10387-2

Dear Commissioner Gomez:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's Findings of Fact, Conclusions and Recommendation in the above-entitled matter. Also enclosed is the official record, with the exception of the tape recording of the hearing. If you would like a copy of those tapes, please contact our office in writing or telephone 341-7642. Our file in this matter is now being closed.

Very truly yours,

BARBARA L. NEILSON
Administrative Law Judge

Telephone: 612/341-7604

BLN:lr
Enclosures
cc: Margaret M. Horsch
Brenda Gulbranson
David E. Albright

STATE OF MINNESOTA)) SS
COUNTY OF HENNEPIN)

AFFIDAVIT OF SERVICE BY U.S. MAIL

LaVon Regan, being first duly sworn, hereby deposes and says that on the 20th of May, 1996, at the City of Minneapolis, county and state aforementioned, she served the attached FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE; Docket No. 11-1800-10387-2, by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid and addressed to the individuals named herein.

Maria R. Gomez, Commissioner
Department of Human Services
2nd Floor Human Services Building
444 Lafayette Road
St. Paul, MN 55155

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Dakota County Judicial Center
1560 West Highway 55
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Brenda Gulbranson
12816 Essex Way
Apple Valley, MN 55124

David E. Albright
Attorney at Law
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Bloomington, MN 55420

LaVon Regan

Subscribed and sworn to before me
this 20th day of May, 1996.

Notary Public